

1 HONORABLE RONALD B. LEIGHTON  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

LISA MICHELS,

Plaintiff,

v.

GEICO INSURANCE AGENCY, INC., a  
foreign corporation,

Defendant.

CASE NO. 12-CV-5609-RBL

ORDER

[Dkt. #9]

14 THIS MATTER is before the Court on Plaintiff Lisa Michels's Motion for Remand [Dkt.  
15 #9]. Defendant Geico removed the case to federal court based on diversity jurisdiction, and now  
16 Michels seeks remand. The parties disagree over whether the required amount in controversy  
17 has been met. For the reasons stated below, Michels's Motion for Remand [Dkt. #9] is denied.  
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**I. BACKGROUND**

19 Michels was seriously injured in an automobile accident. She settled her claim against  
20 the other driver's insurance company for the policy limit, \$25,000, without filing suit. Michels  
21 then sought the policy limit, also \$25,000, from her insurance company, Defendant Geico. The  
22 parties went to arbitration, and the arbitrator awarded Michels \$72,067. Geico sent a check to  
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1 Michels for \$25,000 and requested that she sign a “Satisfaction of Arbitration Award,” which  
 2 limited her judgment damages to the policy limit.

3 Michels brought an action in state court requesting \$72,067 in damages, treble damages,  
 4 punitive damages, attorney’s fees, and “other unspecified damages.” Michels also sought an  
 5 injunction preventing Geico from operating in the insurance business in Washington.

6 Geico removed the case to this Court, claiming that the amount in controversy was met  
 7 on the face of the complaint:

8 Plaintiff is seeking \$72,067 in actual damages, treble damages,  
 9 punitive damages, attorney fees and other unspecified damages.  
 10 Plaintiff’s damages allegations alone show that more than \$75,000  
   is at controversy in this case. However, Plaintiff is also seeking an  
   injunction preventing Defendant from further operating in the  
   insurance business in the State of Washington. The value of  
   Defendant’s future business operations in Washington will  
   certainly exceed \$75,000 by a wide margin. Thus, well over  
 12 \$75,000 is in controversy.

13 (Dkt. #1 at 3.) (internal citations omitted). Michels makes three arguments for remand:  
 14 (1) the required amount in controversy is not met (2) Geico failed to comply with CR 101, which  
 15 required Geico to set forth reasons that caused it to have a good faith belief that the required  
 16 amount in controversy was met, and (3) Geico failed to attach and file the Return of Service to  
 17 the Notice of Removal. Geico argues that the required amount in controversy is clear on the face  
 18 of the complaint and that procedural defects do not deprive the court of jurisdiction.

## 19                   **II. DISCUSSION**

20 Defendants may remove any action filed in state court over which federal district courts  
 21 have original jurisdiction. 28 U.S.C. § 1441(a). “[A]s federal courts, we are courts of limited  
 22 jurisdiction and we will strictly construe our jurisdiction.” *Lowdermilk v. United States Bank*  
 23 *National Ass’n*, 479 F.3d 994, 998 (9th Cir. 2007). To support removal based on diversity  
 24 jurisdiction, a defendant bears the burden of demonstrating two points: (1) that the amount in

1 controversy exceeds \$75,000; and (2) that complete diversity exists between the parties. 28  
 2 U.S.C. § 1332(a); *Cohn v. Petsmart*, 281 F.3d 837, 839–40 (9th Cir. 2002) (noting that defendant  
 3 must prove amount in controversy by a preponderance of the evidence). A court analyzes the  
 4 basis for diversity jurisdiction “on the basis of the pleadings filed at the time of removal without  
 5 reference to subsequent amendments.” *Sparta Surgical Corp. v. Nat'l Ass'n of Securities  
 Dealers, Inc.*, 159 F.3d 1209, 1213 (9th Cir. 1998) (citing *Pfeiffer v. Hartford Fire Ins. Co.*, 929  
 7 F.2d 1484, 1488 (10th Cir. 1991)). In this case, the parties do not dispute that there is complete  
 8 diversity.

9 The party asserting federal jurisdiction has the burden of proof on a motion to remand to  
 10 state court. The removal statute is strictly construed against removal jurisdiction. The strong  
 11 presumption against removal jurisdiction means that the defendant always has the burden of  
 12 establishing that removal is proper. *Conrad Associates v. Hartford Accident & Indemnity Co.*,  
 13 994 F. Supp. 1196 (N.D. Cal. 1998). It is obligated to do so by a preponderance of the evidence.  
 14 *Id.* at 1199; *see also Gaus v. Miles*, 980 F.2d 564, 567 (9<sup>th</sup> Cir. 1992). Federal jurisdiction must  
 15 be rejected if there is any doubt as to the right of removal in the first instance. *Id.* at 566.

16       **A. Amount in Controversy**

17       Michels argues that Geico has failed to show that the amount in controversy exceeds  
 18 \$75,000 because she only seeks \$72,067 and other damages to be proven at trial. Geico makes  
 19 two arguments to establish that the amount in controversy exceeds \$75,000: (1) the \$72,067 in  
 20 actual damages, other unspecified damages, treble damages, punitive damages, and reasonable  
 21 attorney's fees would exceed the \$2,993 necessary to reach the \$75,000 threshold; and (2)  
 22 Michel seeks injunctive relief that greatly exceeds \$75,000.

23       Geico first argues that it is facially evident from the complaint that the total amount of  
 24 damages Michels seeks will exceed \$75,000. Despite the fact that the complaint only alleges

1 \$72,067 in actual damages, the complaint also requests other unspecified damages, treble  
 2 damages, punitive damages, and reasonable attorney's fees. The Ninth Circuit has held that,  
 3 where an underlying statute authorizes an award of attorney's fees, the fees may be included in  
 4 the amount in controversy. *Lowdermilk*, 479 F.3d at 1000. In this case, the Washington  
 5 Insurance Fair Conduct Act<sup>1</sup> and the Washington Consumer Protection Act<sup>2</sup> both allow the  
 6 attorney's fees and treble damages that Michels seeks. Michels requested only \$2,993 less than  
 7 the \$75,000 threshold. Although the jurisdiction of the federal courts is strictly construed, it is  
 8 clear from the complaint that, with attorney's fees, treble damages, and punitive damages,  
 9 Michels asks for far more than \$72,067. Geico has established by a preponderance of the  
 10 evidence that the amount in controversy exceeds \$75,000.

11       Geico further argues that Michels seeks injunctive relief that greatly exceeds \$75,000.  
 12 "In actions seeking declaratory or injunctive relief, it is well established that the amount in  
 13 controversy is measured by the value of the object of the litigation." *Cohn v. Petsmart, Inc.*, 281  
 14 F.3d 837, 840 (9th Cir. 2002) (citing *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333,  
 15 347 (1977). As Geico notes, the value of all of its insurance business in Washington is higher  
 16 than \$75,000.

17       **B. CR 101**

18       Next, Michels argues that even if the required amount in controversy is met, the Court  
 19 should remand, arguing that Geico did not comply with CR 101—a procedural requirement.  
 20 Geico argues that it did comply with CR 101 and that even if it did not, remand for a procedural  
 21 defect is time barred and CR 101 does not apply to this case. CR 101(a) provides:  
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23       <sup>1</sup> REV. WASH. CODE 48.30.015(1).

24       <sup>2</sup> REV. WASH. CODE 19.86.090.

If a complaint filed in state court does not set forth the dollar amount prayed for, a removal petition shall nevertheless be governed by the time limitation of 28 U.S.C. § 1446(b) if a reasonable person, reading the complaint of the plaintiff, would conclude that the plaintiff was seeking damages in an amount greater than the minimum jurisdictional amount of this court. The notice of removal shall in that event set forth the reasons which cause petitioner to have a good faith belief that the plaintiff is seeking damages in excess of the jurisdiction amount of this court notwithstanding the fact that the prayer of the complaint does not specify the dollar damages being sought.

Assuming without deciding that CR 101 applies and that remand is not time barred, the Court concludes that Geico complied with CR 101. Geico set forth the reasons in its notice of removal that caused it to have a good faith belief that the amount in controversy exceeded \$75,000—specifically, that Michels was only \$2,993 shy of the requisite amount; she requested attorney's fees, treble damages, and punitive damages in addition to actual damages; and Geico's future operations in Washington exceed the requisite amount.

### C. Return of Service

Finally, Michels argues that Geico's failure to attach and file the Return of Service justifies remand. Geico again argues that the claim is untimely and that a technical defect does not deprive the court of jurisdiction.

Under 18 U.S.C. § 1447(c), motions for remand based upon any defect other than subject matter jurisdiction must be made within thirty days of the filing of the notice of removal. Although some circuits have held that failure to attach the required documents is a jurisdictional defect, the majority view holds that "mere modal or procedural defects in removal are not jurisdictional." *Yellow Transp., Inc. v. Apex Digital, Inc.*, 406 F. Supp. 2d 1213, 1215 (D. Kan. 2005) (internal quotations omitted). District courts in this circuit have followed the majority view. See *Ackerberg v. Citicorp USA, Inc.*, – F. Supp. 2d –, No. 12-CV-3484, 2012 WL 3642741 (N.D. Cal. Aug. 23, 2012) ("[D]efendants' failure to provide [the proper

1 documentation] was a technical defect that does not strip this Court of jurisdiction.”); *Hood*  
2 *Custom Homes, LLC v. Illinois Nat. Ins. Co.*, No. 08-CV-1506-JE, 2009 WL 1531784 \*6 (D. Or.  
3 May 26, 2009) (“[D]efendant’s procedural error was ‘trivial’ and in no way prejudiced plaintiff  
4 or interfered with the court’s ability to effectively adjudicate the parties’ dispute.”). This Court  
5 agrees with the majority view.

When Geico removed the case to federal court, it attached the Summons, Complaint, the exhibits, and the Jury Demand. Geico's failure to attach the "Return of Service" is a trivial error and does not deprive this court of jurisdiction.

### III. CONCLUSION

10 Michels's Motion for Remand [Dkt. #9] is DENIED.

11 IT IS SO ORDERED.

Dated this 19th day of November, 2012.

Ronald B. Lightner

Ronald B. Leighton  
United States District Judge